



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated May 30, 2015 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 31 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant's mother, "witness BP," testified on behalf of the tenant at this hearing. The tenant called into the teleconference hearing at approximately 9:40 a.m., when the hearing began at 9:30 a.m., as the tenant mistakenly believed that she would receive a call from the Residential Tenancy Branch.

The tenant testified that she personally received the landlord's 1 Month Notice on June 1, 2015. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on June 1, 2015. The 1 Month Notice states an effective move-out date of June 30, 2015.

The tenant testified that she personally served the landlord with the tenant's application for dispute resolution hearing package, with the exception of coloured photographs, ("Application") on June 2, 2015. Witness BP testified that she witnessed this service. In accordance with section 89 of the *Act*, I find that the landlord was served with the tenant's Application on June 2, 2015. I advised the tenant during the hearing, that since she did not serve the landlord with the coloured photographs, I could not consider them as evidence at this hearing or in my decision.

Issue to be Decided

Should the landlord's 1 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Analysis

In accordance with subsection 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on June 1, 2015. The tenant filed her application on the same date. Accordingly, the tenant filed within the ten day limit under the *Act*.

Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not appear at this hearing to provide any testimony. The landlord did not meet her onus of proof.

Thus, as advised to the tenant during the hearing, the landlord's 1 Month Notice, dated May 30, 2015, is cancelled and of no force or effect. This tenancy will continue until it is ended in accordance with the *Act*. As the tenant was successful in her Application, she is entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, dated May 30, 2015. The landlord's 1 Month Notice, dated May 30, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The tenant is entitled to deduct \$50.00 total from a future rent payment at this rental unit, in full satisfaction of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 20, 2015

Residential Tenancy Branch